

Appl. No. 09/777,989
Atty. Docket No. 8035M
Amdt. dated 25 November, 2005
Reply to Office Action of 25 May, 2005
Customer No. 27752

Amendments to the Drawings

The attached sheet of drawings includes changes to Fig 6. This sheet, which includes Fig. 6, replaces the original sheet including Fig. 6. In Figure 6, previously omitted designation as prior art has been added.

Attachment: Replacement Sheet

Annotated Sheet Showing Changes

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REMARKS

Claims 1-9 are pending in the present application. No additional claims fee is believed to be due.

Claim 3 has been amended to correct the improper claim dependency to multiple Claims. Claim 3 has been further amended to correct the visual appearance of the subscript. Support for these amendments is found in Claim 3, as originally filed.

Claim 4 has been amended to more particularly point out and distinctly claim applicant's invention. Support for the amendments is found in the Specification at page 15, line 27 through page 16, line 2.

Claim 5 has been amended to more particularly point out and distinctly claim applicant's invention. Support for the amendments is found in Claim 1 as originally filed, and in the Specification at page 21, line 20 through page 22, line 9.

Claims 6 and 7 have been amended to correct minor typographical errors.

Claim 9 has been amended to correct the improper claim dependency to multiple Claims. Support for this amendment is found in Claim 9, as originally filed. Claim 9 has been further amended to correct the visual appearance of the subscript.

The Specification has been amended to correct a typographical mistake regarding the inadvertent omission of references to both Figures 4a and 4b.

The Specification has been amended to correct a typographical mistake regarding the inadvertent omission of a designation of Figure 6 as prior art.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Claim Objections

The Office Action states that Claims 1-8 are objected to under 37 C.F.R. 1.75(a) for failing to particularly point out and distinctly claim the subject matter that applicant regards as the invention. For the reasons set forth herein, Applicant respectfully asserts that these objections have either been obviated, or are in error and should be withdrawn.

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With respect to the objection of step (ii) of Claim 1, Applicant respectfully asserts that meaning of the phrase "performing a time segmented numerical analysis" would be well understood to one of ordinary skill in the art. Applicant further submits that the meaning of such phrase is sufficiently provided in the Specification at Page 4, line 21 through Page 5, line 15, and page 6, lines 11-21.

With respect to the objection of step (iv) of Claim 1, Applicant respectfully asserts that meaning of the phrase "its next value" would be well understood to one of ordinary skill in the art. Applicant further submits that the meaning of such phrase is sufficiently provided in the Specification at Page 4, line 21 through Page 5, line 15.

With respect to the objection of step (vi) of Claim 1, Applicant respectfully asserts that meaning of the phrase "optionally displaying the accumulated peak width" would be well understood to one of ordinary skill in the art as displaying such result on a display device or similar device or substance for making or presenting visuals representations. Applicant further submits that the meaning of such phrase is sufficiently provided in the Specification at Page 22, line 21 through Page 24, line 7.

With respect to the objection of Claim 3 on the grounds that there is "only a single equation" to select from, Applicant respectfully asserts that this objection is in error and should be withdrawn. Claim 3 provides that the "peak width at the given time segment" is calculated according the representative equation, in addition to "derivations thereof wherein peak standard deviation is expressed as time or as volume." Accordingly, one of ordinary skill in the art would understand that multiple equations based on the claimed parameters are disclosed and available in the process of the instant Claim. Moreover, Applicant respectfully asserts that the phrase "algebraic equivalents thereof" and "an equation which can be transformed using known identities from chromatographic theory" would be understood by one of ordinary skill in view of the explanations provided in the Specification at page 16, line 3 line through page 19, line 13.

The Office Action states that Claim 4 is objected to because it term "gradient" lacks antecedent basis. As noted above, Claim 4 has been amended to remedy the inadvertent omission and, it is submitted, the objection is now rendered moot and should be withdrawn.

The Office Action states that Claim 5 is objected to because it term "the chromatography program" lacks antecedent basis. As noted above, Claim 5 has been amended to remedy the

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inadvertent omission and, it is submitted, the objection is now rendered moot and should be withdrawn.

With respect to the rejections of Claims 6 and 7, the minor typographical errors have been corrected and, it is submitted, the objection is now rendered moot and should be withdrawn.

For the reasons set forth herein Applicant respectfully asserts that these objections have now been obviated and should be withdrawn.

Rejection Under 35 USC 101

Claims 1-9 have been rejected under 35 USC 101 as being directed towards unpatentable subject matter. The Office Action states that Applicant's claimed invention simply "recites a series of mathematical operations (numerical analysis, calculating, interpolating, etc.) which can be done on paper as the claims are not indicated as being-computer-implemented." The office action further states that the claimed invention recites no "clearly defined practical application. Applicant respectfully asserts that these rejections under 35 USC 101 are in error and should be withdrawn.

35 USC 101 states as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Applicant first highlights that the presently claimed invention is clearly directed to a process, in this case a process for predicting the peak width of a solute peak in a gradient elution chromatography program. *In re Bergy*, 596 F.2d 952 (C.C.P.A. 1979) has long established that all that is necessary to satisfy the requirements of 35 USC 101 is for the claimed invention to be one of the enumerated class of inventions (i.e., useful process, machine, manufacture, or composition of matter). *Id.* At 960. Applicant asserts that this alone should be sufficient to overcome any rejection under 35 USC 101, as the present invention is clearly a process.

In ruling in the matter of *State Street Bank & Trust Co. v. Signature Financial Group*, 149 F.3d 1526 (Fed. Cir. 1994), the Federal Circuit held that the determination of patentability should not be based exclusively on the presence or absence of physicality, but on the practical

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utility of the claimed invention. In the matter of *In re Alappat*, 33F.3d 1526 (Fed. Cir. 1994) the Federal Circuit clearly held that in order for an invention to have practical application it shall provide a "useful, concrete and tangible result." *Id.* At 1544.

The presently claimed invention is directed to a method for predicting peak width of a solute peak in a gradient elution chromatography program. In particular, the methods of the present invention are employed in designing HPLC protocols that use significantly fewer resources, and take significantly less time, than the trial and error approaches known in the prior art. (See Specification at page 3, line 17 to page 4, line 19). Applicant, therefore, respectfully asserts that the reduction in the time and resources required to create effective HPLC protocols undoubtedly demonstrates such a useful, concrete and tangible result.

The present invention is clearly directed towards a process, thereby satisfying the requirements for patentability set forth in *In re Bergy*, 596 F.2d 952 (C.C.P.A. 1979). Moreover, the present invention clearly demonstrates practical utility in the manner set forth in *In re Alappat*, 33F.3d 1526 (Fed. Cir. 1994) and *State Street Bank & Trust Co. v. Signature Financial Group*, 149 F.3d 1526 (Fed. Cir. 1994). Accordingly, Applicant respectfully asserts that the present invention has more than satisfied the requirements for utility under 35 USC 101 and continued rejection on this basis would be in error and should be withdrawn.

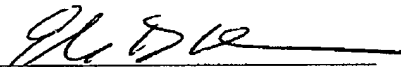
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Conclusion

Applicants have made an earnest effort to place the present claims in condition for examination and allowance. WHEREFORE, entry of the amendments provided herewith, reconsideration of the claims in light of the above remarks, withdrawal of the objections under 37 CFR 1.75(e) and the rejections under 35 USC 101, and allowance of Claims 1 to 9 are respectfully requested. In the event that issues remain prior to allowance of the noted claims, then the Examiner is invited to call Applicants' undersigned attorney to discuss any remaining issues.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

By 

Signature

Erich D. Hemm

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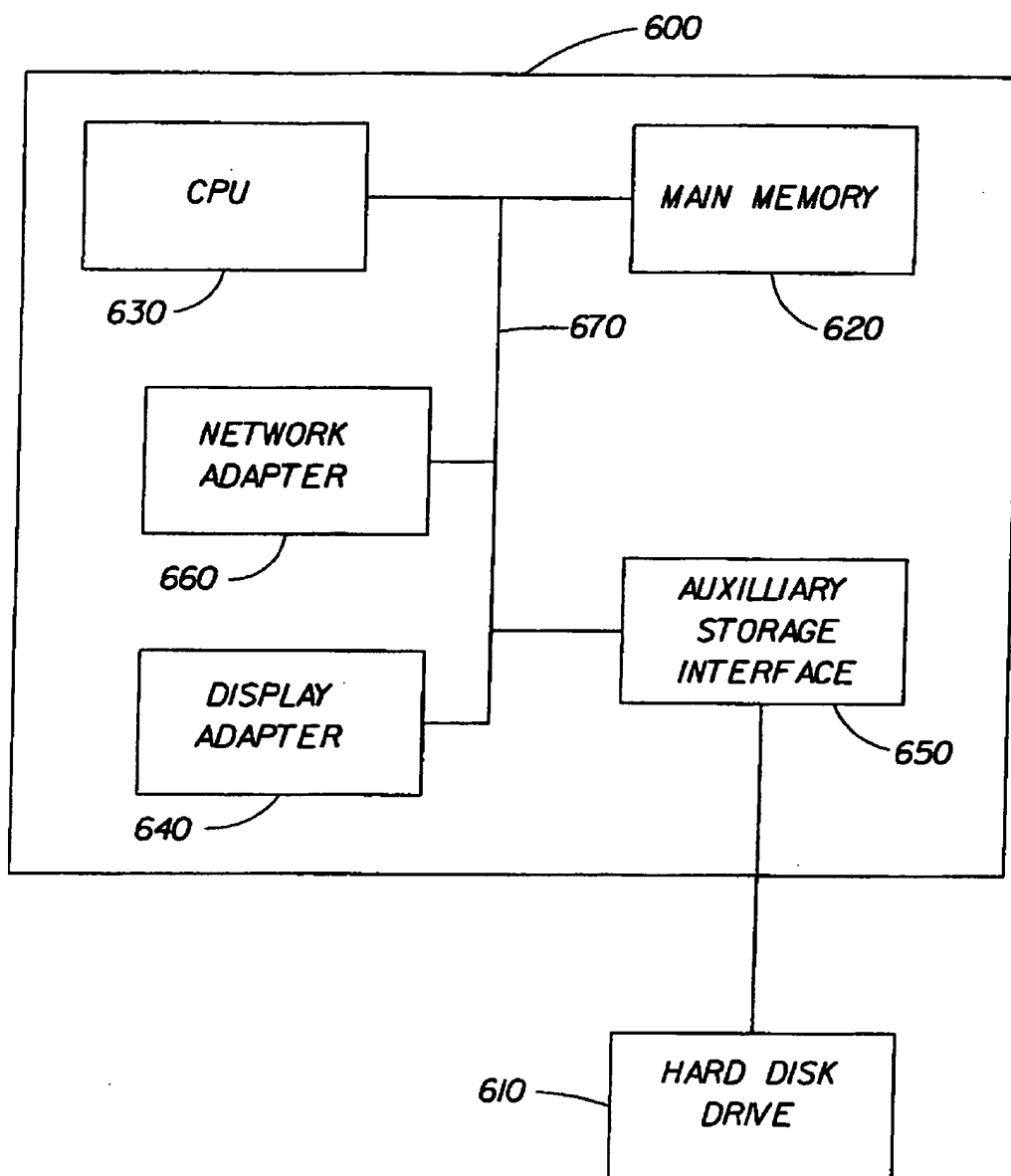


Fig. 6
[PRIOR ART]